



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 64

[CG Docket No. 17-59; FCC 20-187; FRS 17439]

Advanced Methods to Target and Eliminate Unlawful Robocalls

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules to implement the TRACED Act and require voice service providers to better police their networks. Specifically, the Commission requires voice service providers to meet certain affirmative obligations and to better police their networks against illegal calls. Second, the Commission expands its existing call blocking safe harbor to cover network-based blocking of certain calls that are highly likely to be illegal. Third, the Commission adopts rules to provide greater transparency and ensure that both callers and consumers can better identify blocked calls and ensure those that are wanted are un-blocked, consistent with the TRACED Act. Finally, the Commission broadens its point-of-contact requirement to cover caller ID authentication concerns under the TRACED Act.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] except instruction 5 adding § 64.1200(k)(9), which is effective January 1, 2022, and instruction 6 adding § 64.1200(k)(10) and (n)(2), which is delayed indefinitely. The Commission will publish a document in the Federal Register announcing the effective date for § 64.1200(k)(10) and (n)(2).

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Report and Order*, in CG Docket No. 17-59, FCC 20-187, adopted on December 29, 2020, and released on December 30, 2020. The full text of document FCC 20-187 is available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS). The full text of document FCC 20-187 and

any subsequently filed documents in this matter may also be found by searching ECFS at:

<http://apps.fcc.gov/ecfs/> (insert CG Docket No. 17-59 into the Proceeding block). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov, or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice).

FINAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS

This document contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in the *Fourth Report and Order* as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

In this document, the Commission has assessed the effects of its requirements that voice service providers report to the Commission following a notification that certain telephone network traffic appears to be unlawful and that voice service providers that block calls disclose to consumers a list of blocked calls upon request. The Commission finds the requirement to report to the Commission is necessary to ensure that voice service providers are taking proper steps to prevent illegal calls from reaching consumers and to avoid the risk of bad actor voice service providers shielding bad actor callers. The Commission finds that the blocked calls list is necessary to ensure consumers receive transparency and effective redress. Further, the Commission's decisions to allow flexibility in the method for providing the list and to limit the scope of the list appropriately balance small business' concerns.

Sections 641.1200(k)(10) and 64.1200(n)(2) contain information collection requirements and are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the Federal Register announcing the effective dates for those sections.

CONGRESSIONAL REVIEW ACT

The Commission sent a copy of the *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

SYNOPSIS

1. With the *Fourth Report and Order*, the Commission takes further steps to implement the TRACED Act and require voice service providers to better police their networks. The Commission also responds to caller concerns that their calls may be blocked in error and ensures that consumers receive much-needed protection from harassing and even fraudulent calls. First, the Commission requires all voice service providers to take steps to stop illegal traffic on their networks and assist the Commission, law enforcement, and the industry traceback consortium (Consortium) in tracking down callers that make such calls. Second, the Commission expands its safe harbor to include network-based blocking based on reasonable analytics that incorporate caller ID authentication information designed to identify calls that are highly likely to be illegal, if this blocking is managed with human oversight and network monitoring sufficient to ensure that blocking is working as intended. Third the Commission requires that voice service providers that block calls disclose such blocking, establish a dispute resolution process to correct erroneous blocking, and promptly resolve disputes. Finally, the Commission addresses several other pending issues from the *Call Blocking Further Notice*, published at 85 FR 46063, July 31, 2020, including whether to adopt a further safe harbor for the misidentification of the level of trust for calls and additional methods to protect consumers from unwanted calls and text messages from unauthenticated numbers.

Affirmative Obligations for Voice Service Providers

2. The Commission and law enforcement play critical roles in combatting illegal robocalls, as evidenced by the FCC/FTC collaboration to stop COVID-19-related scam calls. The Commission thus wants to ensure that both the Commission and law enforcement have information necessary to combat illegal robocalling. The Commission now requires every voice service provider to: (1) respond to traceback requests from the Commission, civil and criminal law enforcement, and the Consortium; (2) take steps to effectively mitigate illegal traffic when it receives actual written notice of such traffic from the Commission; and (3) implement affirmative, effective measures to prevent new and renewing customers from using its network to originate illegal calls.

Respond to Traceback Requests

3. The Commission adopts its proposal to require all voice service providers to respond to traceback requests from the Commission, civil and criminal law enforcement, and the Consortium. And the Commission makes clear that it expects voice service providers to reply fully and timely. Traceback is an essential tool for determining the source of illegal calls. It is useful to prevent further calls from the same source and to inform enforcement actions. This information is particularly important when the caller ID may be spoofed, as it can greatly assist with identification of the actual caller.

4. *Entities Authorized to Make the Request.* The Commission adopts its proposal to require voice service providers to respond to traceback requests from the Commission, civil and criminal law enforcement, and the Consortium. The Commission encourages, but does not require, law enforcement to make such requests through the Consortium, where possible. This will improve efficiency and help ensure that requests are handled in a consistent manner. In requiring response to the Consortium, the Commission does not vest any authority in the Consortium or its members to address non-compliance under the Commission's rules. Instead, the Consortium should inform the Commission when they identify a pattern of non-compliance, and the Commission will take any appropriate action.

Take Steps to Effectively Mitigate Illegal Traffic when Notified by the Commission

5. The Commission adopts a modified version of its proposal to require voice service providers to take steps to effectively mitigate illegal traffic when notified by the Commission. Specifically, the Commission directs the Commission's Enforcement Bureau to identify suspected illegal calls and provide written notice to voice service providers. This requirement builds on the safe harbor it established in the *Call Blocking Order*, published at 85 FR 56530, September. 14, 2020. That safe harbor permits downstream voice service providers to block calls where an upstream voice service provider failed to effectively mitigate illegal traffic after being notified of such traffic by the Commission. This requirement takes the additional step of holding the notified voice service provider liable for that failure.

6. When providing the notice under this new rule, the Enforcement Bureau shall: (1) identify with as much particularity as possible the suspected traffic; (2) cite the statutory or regulatory provisions the suspected traffic appears to violate; (3) provide the basis for the Enforcement Bureau's reasonable belief that the identified traffic is unlawful, including any relevant nonconfidential evidence from credible sources such as the Consortium or law enforcement agencies; and (4) direct the voice service provider

receiving the notice that it must comply with § 64.1200(n)(2) of the Commission's rules. The Commission generally expects that the Enforcement Bureau will notify either the originating voice service provider that has a direct relationship to the caller or the intermediate provider that is the gateway onto the U.S. network.

7. Upon receiving such notice, the voice service provider must promptly investigate the traffic identified in the notice and either take steps to effectively mitigate the identified traffic, in the manner described below, or respond to the Commission that the service provider has a reasonable basis for concluding that the identified calls are not illegal. If the notified voice service provider determines that such traffic comes from an upstream voice service provider with direct access to the U.S. public switched telephone network, the notified voice service provider must promptly inform the Commission of the source of the traffic and, if possible, take lawful steps to effectively mitigate this traffic. Such steps could include, for example, enforcing contract terms or blocking the calls from bad actor providers.

8. Each notified voice service provider must promptly report the results of its investigation to the Enforcement Bureau, including any steps the voice service provider has taken to effectively mitigate the identified traffic, or an explanation as to why the voice service provider reasonably concluded that the identified calls were not illegal, and what steps it took to reach that conclusion. The Commission emphasizes that a "reasonable basis for concluding that the calls are not illegal" requires sufficient due diligence on the part of the voice service provider making such a determination. For example, the mere existence of a contractual provision forbidding illegal calls on the network is not sufficient to make this determination. Similarly, in cases where a caller makes telemarketing calls that include prerecorded or artificial voice messages, is it not reasonable to rely solely on a caller's written or verbal assurances in lieu of documented proof of prior express written consent from the called parties. Callers that believe that they have been blocked in error can seek review by the Commission through existing mechanisms.

9. For a voice service provider to take steps to "effectively mitigate" the traffic identified, it must first investigate to identify the source of that traffic. Where the source is a customer or some other entity that does not have direct access to the U.S. public switched telephone network, the voice service provider must take steps to prevent that source from continuing to originate such traffic. This could mean ending a customer relationship, limiting access to high-volume origination services, or any other steps that have the

effect of stopping this traffic and preventing future, similar traffic. The Commission does not expect that originating voice service providers will need to block calls to comply with this requirement, as such voice service providers have a direct relationship with the customer and can use other mechanisms to address these issues. The Commission notes, however, that blocking may be necessary for gateway providers to comply with these requirements.

10. The Commission anticipates that this requirement will primarily impact originating or gateway voice service providers. If, however, a voice service provider receiving notification from the Commission determines that the source of the illegal traffic is another voice service provider with access to the U.S. public switched telephone network, it must notify the Commission. The originally notified voice service provider must, if possible, take any otherwise lawful steps available to effectively mitigate the identified traffic. Where a voice service provider cannot take immediate action, the Commission encourages voice service providers to use the safe harbor for provider-based blocking the Commission adopted in the *Call Blocking Order*, once the criteria for that safe harbor have been met.

11. The Commission recognizes that intermediate and terminating voice service providers have limited visibility into the actual source of the traffic. The Commission accordingly does not expect perfection in mitigation, nor do the rules it adopts require an intermediate or terminating voice service provider to block all calls from a particular source. Further, the rules the Commission adopts today only require mitigation steps from originating or gateway voice service providers. While gateway providers may need to engage in blocking to comply with this rule, the Commission does not expect them to block all traffic, and encourages use of other methods where available.

Implement Effective Measures to Prevent New and Renewing Customers from Originating Illegal Calls

12. The Commission adopts its proposal to require voice service providers to adopt affirmative, effective measures to prevent new and renewing customers from using their network to originate illegal calls. The Commission requires that all originating voice service providers know their customers and exercise due diligence in ensuring that their services are not used to originate illegal traffic. Beyond that, the Commission does not require that voice service providers take specific, defined steps, but instead permits them flexibility to determine what works best on their networks. The Commission does

recommend that voice service providers exercise caution in granting access to high-volume origination services, to ensure that bad actors do not abuse such services.

13. While more involved investigations represent some burden, particularly for smaller voice service providers, voice service providers of all sizes should be able to impose and enforce relevant contract terms. Of course, contract provisions are only effective if they are enforced, and voice service providers that refuse to do so fail to satisfy this requirement. The Commission also clarifies that, if voice service providers have already implemented effective measures, they do not need to take further steps at this time. Voice service providers, however, that have not done so will need to comply with this requirement when they accept new customers or renew existing customers after the date of these rules.

Expanding the Safe Harbor Based on Reasonable Analytics to Network-Based Blocking

14. The Commission adopts its proposal to expand the safe harbor based on reasonable analytics to cover network-based blocking if the network-based blocking incorporates caller ID authentication information where available and otherwise meets the requirements the Commission adopted both in the *Call Blocking Order* and elsewhere in the *Fourth Report and Order*. To get the benefit of this safe harbor, a terminating voice service provider must ensure its network-based blocking targets only calls highly likely to be illegal, not simply unwanted. It must also manage this blocking with human oversight and network monitoring sufficient to ensure that the blocking works as intended; this must include a process that reasonably determines that the particular call pattern is highly likely to be illegal prior to blocking calls that are part of that pattern. And the Commission expects voice service providers to demonstrate they have conducted an appropriate process should the Commission inquire about specific blocking. The Commission bases this decision on its previous finding that no reasonable consumer would want to receive calls that are highly likely to be illegal. The safe harbor the Commission adopts today ensures that terminating voice service providers can respond to evolving threats while safeguarding the calls consumers want.

15. *Network Blocking Based on Reasonable Analytics.* In expanding its safe harbor, the Commission first makes clear that terminating voice service providers may block calls at the network level, without consumer opt in or opt out, if that blocking is based on reasonable analytics that incorporate caller ID authentication information designed to identify calls and call patterns that are highly likely to be illegal.

Terminating voice service providers must manage that blocking with human oversight and network monitoring sufficient to ensure that blocking is working as intended. This must include a process to reasonably determine that the particular call pattern is highly likely to be illegal prior to blocking calls. A terminating voice service provider must disclose to consumers that it is engaging in such blocking so that consumers are fully aware of it. In the *2017 Call Blocking Order*, published at 83 FR 1566, January 12, 2018, the Commission authorized voice service providers to block, without consumer consent, certain categories of calls on the basis that no reasonable consumer would want to receive such calls. The Commission's decision here is an extension of this decision, making clear that a terminating voice service provider may block any calls that it determines are highly likely to be illegal based on certain defined parameters.

16. For purposes of this safe harbor, the Commission makes clear that terminating voice service providers must have in place a process to reasonably determine that the particular call pattern is highly likely to be illegal prior to blocking calls. Doing so will ensure that important calls, including emergency calls, are not blocked in error based solely on analytics. The Commission does not prescribe the specific steps of this process but instead expects that it will include steps designed to find out whether the calls that are part of the call pattern in question are highly likely to be illegal such as dialing the telephone number from which the apparently illegal calls purportedly originate; reviewing complaint data about calls from the source; or contacting the originating voice service provider.

17. The Commission urges terminating voice service providers to be thorough in this process to avoid blocking errors. In particular, the Commission believes terminating voice service providers will need to use a combination of methods in their processes. For example, call-backs may work well for some types of high-volume traffic, but may not be determinative for emergency alerts since the number may not be set up to receive calls. The Commission further clarifies that, because it only authorizes blocking of calls that are part of a call pattern that indicates the calls are highly likely to be illegal, when a terminating voice service provider learns that calls fitting this pattern are likely lawful, that voice service provider must immediately cease network-based blocking. The Commission notes that a voice service provider may continue to block under this safe harbor while investigating a dispute prior to obtaining information that indicates the calls are likely lawful.

Enhanced Transparency and Redress Requirements

18. Consistent with the TRACED Act and building on its *Call Blocking Order and Further Notice*, the Commission adopts additional requirements to provide callers and consumers with more transparency to ensure that they can effectively access redress mechanisms, and ensure that a caller can verify the authenticity of its calls. First, the Commission requires terminating voice service providers that block calls to immediately notify the caller that the call has been blocked by sending either a Session Initiation Protocol (SIP) or ISDN User Part (ISUP) response code, as appropriate, and the Commission requires all voice service providers in the call path to transmit these codes to the origination point. Second, the Commission requires terminating voice service providers that block calls on an opt-in or opt-out basis to disclose to their subscribers a list of blocked calls upon request. Third, when a calling party disputes whether blocking its calls is appropriate, the Commission requires terminating voice service providers to provide a status update to the party that filed the dispute within 24 hours. The Commission requires that the point of contact which terminating voice service providers have established to handle blocking disputes also handle contacts from callers that are adversely affected by information provided by caller ID authentication seeking to verify the authenticity of their calls. Finally, the Commission declines to address the issue of erroneous labeling at this time.

19. The Commission expects voice service providers to satisfy those requirements, whether or not they use a third party, to ensure that the safeguards the Commission adopts to prevent erroneous blocking apply across the network. The Commission therefore declines to allow voice service providers to avoid liability solely because they make use of a third-party service. By contrast, a voice service provider is not responsible for blocking done by a blocking service chosen by the consumer such as a blocking app.

Immediate Notification of Blocking

20. The Commission requires terminating voice service providers that block calls to immediately notify callers of such blocking. The Commission further directs all voice service providers to perform necessary software upgrades to ensure the codes it requires for such notification are appropriately mapped; voice service providers must ensure that calls that transit over TDM and IP networks return an appropriate code. The Commission requires all voice service providers in the call path to transmit the code, or its equivalent, as discussed below, to the origination point so that callers with the appropriate

equipment may receive timely notice of a blocked call. The Commission's requirements ensure that legitimate callers know when their calls are blocked so they can seek redress.

21. *Method of Notification.* To ensure that callers understand these notifications and can make informed decisions regarding next steps, the Commission requires voice service providers to use specific, existing codes when blocking calls. Callers with properly configured equipment will thereby receive sufficient information to determine whether to access redress or investigate the blocking further. The Commission requires that terminating voice service providers that block calls on an IP network return SIP Code 607 or 608, as appropriate. Both of these codes are designed to be used for call blocking. Because SIP codes are not available on non-IP networks, ISUP code 21 is the appropriate code for calls blocked on a TDM network. Therefore, the Commission requires that terminating voice service providers that block calls on a TDM network return ISUP code 21.

22. Many calls transit both IP-based and TDM networks. The Commission therefore establishes requirements regarding how these codes map, or translate, when call signaling transits between IP and TDM. For signals moving from IP to TDM, the Commission directs voice service providers, regardless of their position in the network, to make any necessary upgrades or software configuration changes to ensure that SIP Codes 607 and 608 map to ISUP code 21. In certain cases, callers may also receive SIP code 603 when calls have been blocked. This is likely to occur when call signaling transits from TDM to IP. The Commission further notes that the specifications for SIP code 608 give some guidance for interoperability, including the playing of an announcement. The Commission strongly encourages voice service providers to use this portion of the specification to eliminate confusion caused by ISUP code 21's multiple uses.

23. *Compliance Date.* Finally, the Commission gives voice service providers until January 1, 2022, approximately 12 months after the adoption of the *Order*, to comply with its immediate notification requirements. The Commission recognizes that voice service providers are bearing costs as they work to implement STIR/SHAKEN in the IP portions of their networks, which the Commission has required by June 30, 2021. Any incremental increase in burden could introduce challenges in compliance for some voice service providers. By delaying the compliance date of these requirements until January 1, 2022, which is approximately 12 months from the adoption of the *Order*, or six months from the

STIR/SHAKEN implementation compliance date, the Commission ensures that voice service providers can make the necessary software upgrades without diverting resources from STIR/SHAKEN implementation.

Blocked Calls List

24. The TRACED Act directs the Commission to ensure that consumers, as well as callers, have transparency and effective redress when wanted calls are blocked using robocall blocking services provided on an opt-out or opt-in basis pursuant to its *Call Blocking Declaratory Ruling and Further Notice*. Consumers may opt out of blocking services at any time as a form of redress, and the Commission already made clear that voice service providers that use blocking programs should disclose to consumers the types of calls they seek to block and make clear that some wanted calls may be blocked. While a consumer knows that wanted calls may be blocked, consumers may not be able to determine whether blocking has occurred. The Commission thus requires any terminating voice service provider that blocks calls on an opt-in or opt-out basis to provide, on the request of the subscriber to a particular number, a list of all calls intended for that number that the voice service provider or its designee has blocked. The list should contain the calling number and the date and time of the call. Consistent with the TRACED Act, this list must be provided at no additional charge to the consumer. To ensure that this information is provided to the subscriber in a timely manner, the Commission requires that the terminating voice service provider provide this list within three business days of receiving the request. To avoid unwieldy recordkeeping requirements, the Commission limits the reporting requirement to calls blocked in no fewer than the 28 days prior to the request.

25. *Recipients and Content of List.* The Commission requires that the blocked calls list include calls blocked on an opt-out or opt-in basis and that the voice service provider make it available to the subscriber to the called number. The list need only contain calls blocked with consumer consent because consumers can review these calls and make a different choice. This is also consistent with the scope of transparency and effective redress requirement in section 10(b) of the TRACED Act, which applies to “robocall blocking services provided on an opt-out or opt-in basis.” The Commission limits the scope of parties who can request and receive blocked calls lists to the subscriber because callers already have

transparency and effective redress through the Commission's other requirements and doing so avoids the additional burden on voice service providers of furnishing lists to a potentially large group of others.

26. *Flexibility in Blocked Calls List Mechanism.* Consistent with the call for flexibility in the record, the Commission declines to mandate how voice service providers give subscribers this list. The Commission instead leaves the method of providing the information to the judgment of the voice service provider. For example, voice service providers could use a web portal and those using a third-party blocking service may rely on that third party to provide this list. The ultimate responsibility falls to the voice service provider. Should the third party fail to provide the list consistent with the requirements the Commission adopts herein, the voice service provider will be liable for this failure.

27. *Time for Response and Length of Recordkeeping Requirement.* The Commission requires terminating voice service providers to respond to subscribers' requests for blocked calls lists within three business days of receiving such a request. In establishing this requirement, the Commission balances the burden to the voice service provider against the needs of the subscriber. The Commission determines that three business days is sufficient time for a voice service provider to compile such a list, even if they are using a manual process. It also ensures that the subscriber, who may be requesting the list because they suspect important calls may not be reaching them, has access to this information in a timely manner.

28. To meet this obligation and for purposes of this rule, voice service providers must retain records of blocked calls for a minimum of four weeks or 28 days. This recognizes the need for subscribers to receive meaningful information and seeks to avoid overly burdening voice service providers with unnecessary recordkeeping requirements. Twenty-eight days provides the information subscribers need and imposes a reasonable burden on voice service providers.

Status of Call Blocking Dispute Resolution

29. To ensure that callers can track dispute status and to increase transparency consistent with the TRACED Act, the Commission enhances its existing redress requirements to require voice service providers to respond to blocking disputes they receive through their established point of contact by providing a status update to the party that filed the dispute within 24 hours. In doing so, the Commission does not modify its requirement that disputes are resolved in a reasonable amount of time and at no cost to the caller, if the complaint is made in good faith. Instead, the Commission recognizes both that callers

need speedy resolution of disputes and that voice service providers may need additional time to resolve disputes in certain instances. By requiring a status update within 24 hours, the Commission ensures that callers have the information they need while also granting voice service providers flexibility.

Point of Contact for Verifying Call Authenticity

30. The Commission requires that the point of contact terminating voice service providers have established to take blocking disputes also handle contacts from callers that are adversely affected by information provided by caller ID authentication seeking to verify the authenticity of their calls. Because the Commission's rules already require blocking voice service providers to have a point of contact, it expects that most terminating voice service providers already have one in place. Any terminating voice service provider that does not block calls, and takes into account attestation information in determining how to deliver calls, must provide a point of contact to receive caller complaints regarding caller ID authentication consistent with the rules the Commission established in the *Call Blocking Order*, the *Call Blocking Further Notice*, and the *Fourth Report and Order*.

31. Section 4(c)(1)(C) of the TRACED Act requires the Commission to establish a mechanism for callers that are adversely affected by information provided by the caller ID authentication framework to verify the authenticity of the calls. This will provide callers with a mechanism for redress where, for example, calls are blocked due to an incorrect attestation. The Commission specifies that the point of contact is not required to resolve all disputes about attestation level and, in fact, is not properly placed to do so; the terminating voice service provider is not the entity that typically attests to caller ID. Instead, the terminating voice service provider should consider whether the decision in question would be appropriate if the same calls were to receive a higher level of attestation and treat future calls accordingly unless circumstances change.

32. The Commission's decision to require the same point of contact to handle blocking disputes and "adverse effects" from caller ID authentication information streamlines the process for both voice service providers and callers. The Commission expects that blocking and authentication concerns will often be interrelated, such as when the adverse effect is blocking. Only the terminating voice service provider can determine whether caller ID authentication was a significant factor in its decision and therefore whether there is a need to adjust its analytics or otherwise change its call-delivery practices. Even when the

adverse effects from caller ID authentication and blocking are not directly related, by requiring the same point of contact to receive complaints of both issues, the Commission ensures that a caller only needs to go to one contact at a given terminating voice service provider in order to resolve either issue.

33. Because the TRACED Act requirement seeks to address “adverse effects,” not simply incorrect caller ID authentication information, the Commission finds the terminating voice service provider is in the best position to address callers’ concerns. The terminating voice service provider takes the action that represents the adverse effect, such as blocking. Originating voice service providers, by contrast, are not so positioned because they cannot ensure that attestation information reaches the terminating voice service provider. This is because STIR/SHAKEN does not work on TDM networks. Even once voice service providers implement STIR/SHAKEN, some voice service providers may thus be unable to sign calls and some calls may drop the initial attestation when they transit on TDM.

No Redress Requirements for Labeling

34. The Commission declines to extend redress mechanisms to erroneous call labeling at this time. Rather, the Commission encourages voice service providers and their analytics partners to work in good faith with callers to avoid erroneous labeling so consumers can better decide whether to answer a call.

Other Issues and Proposals

35. *Safe Harbor for Misidentification of the Level of Trust.* At this time, the Commission declines to extend the safe harbor to cover the inadvertent or unintended misidentification of the level of trust for particular calls. The Commission is not aware of any sources of liability specifically for the misidentification of the level of trust, including any liability stemming from non-federal sources. The Commission makes clear, however, that it will consider such a safe harbor in the future should parties bring such sources of liability to its attention. In reaching this conclusion, the Commission finds that it has met the TRACED Act’s direction to provide such a safe harbor through its provision of a safe harbor for blocking, which is the only potential source of liability of which it is aware.

36. *TRACED Act Section 7.* The Commission declines to take further action under section 7 of the TRACED Act at this time, but makes clear that the Commission may act in the future, as circumstances warrant. The Commission believes that, at this time, the best approach to protecting consumers from unwanted calls from unauthenticated numbers is through blocking programs that are consistent with the

safe harbor it adopted in the *Call Blocking Order*. The Commission concludes that it has met its statutory obligation under section 7 by seeking comment on additional steps the Commission could take to provide this protection.

37. *Other Section 4(c) Issues.* The Commission adopts the tentative conclusions proposed in the *Call Blocking Further Notice* with regard to section 4(c) of the TRACED Act. Specifically, the Commission finds that it has fully implemented section 4(c)(1), except to the extent that it adopts new rules elsewhere in this *Order*. The Commission similarly concludes that, in establishing the safe harbor adopted in the *Call Blocking Order* and expanded upon elsewhere in this *Order*, it has properly taken into account the considerations listed in section 4(c)(2) of the TRACED Act.

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the Declaratory Ruling and Further Notice. The Commission sought written public comment on the proposals in the *Call Blocking Further Notice*, including comment on the IRFA. The comments received are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Order

2. The *Fourth Report and Order* takes important steps in the fight against illegal robocalls by requiring voice service providers to take certain affirmative steps to prevent illegal calls. Next, the *Fourth Report and Order* expands the Commission's safe harbor to include network-based blocking based on reasonable analytics that incorporate caller ID authentication information designed to identify calls that are highly likely to be illegal, if this blocking is managed with human oversight and network monitoring sufficient to ensure that blocking is working as intended. The *Fourth Report and Order* then takes steps to implement the TRACED Act by ensuring that both callers and consumers are provided with transparency and effective redress. Taken together, these steps will provide greater protection to consumers and increase trust in the telephone system while ensuring that consumers continue to receive the calls they want.

3. *Affirmative Obligations for Voice Service Providers.* The *Fourth Report and Order* establishes three affirmative obligations for all voice service providers. First, all voice service providers must

respond to traceback requests from the Commission, civil and criminal law enforcement, or the Industry Traceback Consortium (Consortium). Second, all voice service providers must take steps to effectively mitigate suspected illegal traffic when notified of such traffic by the Commission through the Enforcement Bureau. The notice from the Enforcement Bureau must be in writing and include specific information as detailed in the *Fourth Report and Order* and accompanying rules. The notified voice service provider must investigate the suspected illegal traffic and report to the Enforcement Bureau regarding the results of that investigation, including whether the calls came from another voice service provider with direct access to the U.S. public switched telephone network, and any mitigation steps taken. Finally, all voice service providers must take affirmative, effective steps to prevent new and renewing customers from using their network to originate illegal calls.

4. *Expanding the Safe Harbor Based on Reasonable Analytics to Network-Based Blocking.* The *Fourth Report and Order* expands the Commission's safe harbor for blocking based on reasonable analytics, which must include caller ID authentication information where available, to cover certain network-based blocking, without consumer opt in or opt out. The blocking must be designed to target only calls highly likely to be illegal and managed with sufficient human oversight and network monitoring to ensure that blocking is working as intended. For purposes of the safe harbor, the *Fourth Report and Order* makes clear that voice service providers must have a process in place to reasonably determine that a call pattern is highly likely to be illegal prior to initiating blocking without consumer consent, and must cease blocking when the voice service provider learns that calls are likely lawful.

5. *Enhanced Transparency and Redress.* The *Fourth Report and Order* establishes several requirements to implement the TRACED Act and ensure that both callers and consumers are provided with transparency and effective redress. First, voice service providers that block calls must return to the caller an appropriate SIP or ISUP code, as appropriate. In order to ensure that these codes reach the origination point of the call, all voice service providers must make all necessary software upgrades and configuration changes to ensure that these codes translate properly when a call moves between TDM and IP-based networks. Providers must comply with this requirement by January 1, 2022. Second, voice service providers that block on an opt-in or opt-out basis must provide, on the request of the subscriber to a particular number, a list of all calls intended for that number that the provider has blocked. Voice

service providers have three days to provide the list and the list should include all calls blocked on an opt-in or opt-out basis within the 28 days prior to the request. Third, voice service providers that block calls must respond to any blocking dispute within 24 hours, either with a status update or a resolution. This requirement builds on the Commission's requirements in the *Call Blocking Order and Further Notice* that voice service providers designate a single point of contact to handle blocking disputes. Finally, consistent with the TRACED Act, the *Fourth Report and Order* requires that the point of contact previously established to handle blocking disputes also be prepared to handle contacts from callers seeking to verify the authenticity of their calls. Any terminating voice service provider that does not block calls, and takes into account attestation information in determining how to deliver calls, must provide a point of contact to receive caller complaints regarding caller ID authentication consistent with the rules the Commission established in the *Call Blocking Order and Further Notice*, as well as the *Fourth Report and Order*.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. In the *Call Blocking Order and Further Notice*, the Commission solicited comments on how to minimize the economic impact of the new rules on small business. The Commission received seven comments either directly referencing the IRFA or addressing concerns particular to small businesses. Five of these comments addressed the affirmative obligations. Six addressed small business concerns with transparency and redress requirements. Three of these comments addressed issues raised in the *Call Blocking Order and Further Notice* that the *Fourth Report and Order* declines to move forward with, and therefore are not directly relevant to this analysis.

7. *Affirmative Obligations.* The *Fourth Report and Order* requires voice service providers to respond to traceback, mitigate illegal traffic when notified of such traffic by the Commission, and take affirmative steps to prevent illegal calls from new and renewing customers. Commenters, including smaller voice service providers, were generally supportive of these requirements. Commenters did urge us to take certain steps to aid smaller voice service providers and ensure that these voice service providers have the information and resources to comply.

8. With regard to the requirement to respond to traceback requests from the Commission, law enforcement, and the Consortium, ACA Connects notes that many smaller voice service providers may be unfamiliar with the process and urges us to work with stakeholders to educate smaller voice service

providers. In the *Fourth Report and Order* the Commission makes clear to voice service providers that it is in their best interest to ensure that they have a clear point of contact at which to receive these requests. The Commission remains open to working with smaller voice service providers and other stakeholders to ensure that they understand the traceback process and how best to handle these requests.

9. There is significant overlap with commenters' concerns regarding the second and third requirements. In general, these concerns urge the Commission to ensure that these requirements, to the extent possible, consider that smaller voice service providers will have fewer resources. INCOMPAS urges us to avoid overly prescriptive requirements and to provide flexibility on the third requirement. Competitive Carriers urges us to ensure that, with regard to new and renewing customers, the requirement "is satisfied so long as a provider takes action once it has actual knowledge of a customer originating illegal calls." WTA asks that the Commission define particular steps so a voice service provider can be sure it is in compliance. The *Fourth Report and Order* makes clear that, while the Commission does not define specific steps, the Commission does not expect perfection, and that enforcement of contract clauses is sufficient to satisfy the third requirement. By granting flexibility, the Commission ensures that all voice service providers can determine the approach best suited to their networks.

10. *Transparency and Redress.* The *Fourth Report and Order* adopts several transparency and redress requirements, including immediate notification of blocking, provision of a blocked calls list for consumers, and status updates regarding disputes. Commenters raise concerns that prescriptive transparency and redress mandates are particularly burdensome for smaller voice service providers, and generally seek flexibility. They note that smaller providers are more often reliant on third parties, both for blocking services and associated redress. Commenters also raise particular concerns regarding speed of redress for smaller providers. There is, however, some disagreement on this issue, with Telnix noting that smaller voice service providers may also be disadvantaged if larger voice service providers take too long to resolve disputes. WTA also raises concerns about the burdens associated with requiring a blocked calls list, but does not specifically tie these concerns to voice service provider size.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

11. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business

Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

27. The *Fourth Report and Order* requires voice service providers to meet certain affirmative obligations and to provide specific transparency and redress to both callers and consumers. These changes affect small and large companies equally and apply equally to all the classes of regulated entities identified above.

28. *Reporting and Recordkeeping Requirements.* The *Fourth Report and Order* requires voice service providers to effectively mitigate illegal traffic once notified of suspected illegal traffic by the Commission through its Enforcement Bureau. As part of this requirement, a notified voice service provider must promptly report the results of its investigation to the Enforcement Bureau, including any steps the voice service provider has taken to effectively mitigate the identified traffic, or an explanation as to why the voice service provider reasonably concluded that the identified calls were not illegal, and what steps it took to reach that conclusion. The *Fourth Report and Order* also requires voice service providers to provide, at the request of a subscriber, a list of calls blocked on an opt-out or opt-in basis over the prior 28 days. This requires voice service providers that block calls on an opt-out or opt-in basis to retain records regarding such blocking for a minimum of 28 days. The other requirements adopted in the *Fourth Report and Order* do not include specific recordkeeping or retention requirements. However, voice service providers may find it necessary to retain records to ensure that they are able to resolve blocking disputes, respond to traceback, or demonstrate that they are in compliance with the Commission's rules in the event of a dispute.

Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

29. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the

resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

30. The Commission considered feedback from the *Call Blocking Order and Further Notice* in crafting the final order. The Commission evaluated the comments with the goal of protecting consumers from illegal calls while also ensuring that both consumers and callers receive transparency and effective redress. For example, in establishing affirmative obligations for voice service providers, the Commission ensured that voice service providers have flexibility to determine how best to comply and made clear that the Commission does not expect perfection. With regard to transparency and redress requirements, wherever possible, the Commission ensures that prescriptive requirements make use of already-existing mechanisms to minimize the burdens and declined to require resolution of blocking disputes within a specific timeframe. The Commission also delays the date of compliance, setting it at January 1, 2022, to ensure that voice service providers have sufficient time to make any necessary upgrades or configuration changes before they must provide immediate notification of blocked calls by providing a SIP or ISUP code.

31. The *Fourth Report and Order* carefully weighs the concerns of small voice service providers against those of callers, many of which are also small businesses. In adopting an immediate notification requirement, it makes use of existing mechanisms and delays the compliance date to keep the burden as low as possible while still providing important information to callers. Further, in requiring a status update, but not resolution, within 24 hours, the *Fourth Report and Order* ensures that small voice service providers have necessary time to conduct investigations while also providing valuable information to callers. The requirements adopted in the *Fourth Report and Order* will impose some burden on smaller voice service providers, but these burdens are necessary to implement the TRACED Act and ensure that both callers and consumers are provided with transparency and effective redress.

32. The Commission does not see a need to establish a special timetable for small entities to reach compliance with the modification to the rules. No small business has asked for a delay in implementing the rules. Any voice service providers that require such a delay may reach out through the usual

processes. Similarly, there are no design standards or performance standards to consider in this rulemaking.

Ordering Clauses

91. Accordingly, *It is ordered* that, pursuant to sections 4(i), 201, 202, 217, 227, 227b, 251(e), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 201, 202, 217, 227, 227b, 251(e), 303(r), 403, this Fourth Report and Order IS *ADOPTED*.

92. *It is further ordered* that part 0 and part 64 of the Commission's rules are amended as set forth in the Final Rules, with the exception of new §§ 64.1200(k)(9) and (10), and 64.1200(n)(2), and *shall be effective* 30 days after their publication in the Federal Register.

93. *It is further ordered* that new § 64.1200(k)(9) *shall be effective* on January 1, 2022.

94. *It is further ordered* that new § 64.1200(k)(10) and 64.1200(n)(2) *shall be effective* 30 days after the Commission's publication of a notice in the Federal Register, which will announce approval of portions of the rules requiring approval by OMB under the PRA.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements,
Telecommunications, Telephone.

Marlene Dortch

Secretary, Office of the Secretary

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 parts 0 and 64 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 409.

2. Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER], amend §0.111 by adding paragraph (a)(27) to read as follows:

§ 0.111 Functions of the Bureau.

(a) * * *

(27) Identify suspected illegal calls and provide written notice to voice service providers. The Enforcement Bureau shall:

- (i) Identify with as much particularity as possible the suspected traffic;
- (ii) Cite the statutory or regulatory provisions the suspected traffic appears to violate;
- (iii) Provide the basis for the Enforcement Bureau's reasonable belief that the identified traffic is unlawful, including any relevant nonconfidential evidence from credible sources such as the industry traceback consortium or law enforcement agencies; and
- (iv) Direct the voice service provider receiving the notice that it must comply with § 64.1200(n)(2) of the Commission's rules.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

3. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 262, 276, 403(b)(2)(B), (c), 616, 620, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

4. Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, amend § 64.1200 by revising paragraphs (k)(5), (6), and (8), and by adding paragraphs (k)(9) through (11) and (n) to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

(k) * * *

(5) A provider may not block a voice call under paragraph (k)(1) through (4) or (11) of this section if the call is an emergency call placed to 911.

(6) A provider may not block a voice call under paragraph (k)(1) through (4) or (11) of this section unless that provider makes all reasonable efforts to ensure that calls from public safety answering points and government emergency numbers are not blocked.

* * * * *

(8) Each terminating provider that blocks calls pursuant to this section or utilizes caller ID authentication information in determining how to deliver calls must provide a single point of contact, readily available on the terminating provider's public-facing website, for receiving call blocking error complaints and verifying the authenticity of the calls of a calling party that is adversely affected by information provided by caller ID authentication. The terminating provider must resolve disputes pertaining to caller ID authentication information within a reasonable time and, at a minimum, provide a status update within 24 hours. When a caller makes a credible claim of erroneous blocking and the terminating provider determines that the calls should not have been blocked, or the call delivery decision is not appropriate, the terminating provider must promptly cease the call treatment for that number unless circumstances change. The terminating provider may not impose any charge on callers for reporting, investigating, or resolving either category of complaints, so long as the complaint is made in good faith.

(9)-(10) [Reserved]

(11) A terminating provider may block calls without liability under the Communications Act and the Commission's rules, without giving consumers the opportunity to opt out of such blocking, so long as:

(i) The provider reasonably determines, based on reasonable analytics that include consideration of caller ID authentication information where available, that calls are part of a particular call pattern that is highly likely to be illegal;

(ii) The provider manages its network-based blocking with human oversight and network monitoring sufficient to ensure that it blocks only calls that are highly likely to be illegal, which must include a process that reasonably determines that the particular call pattern is highly likely to be illegal before initiating blocking of calls that are part of that pattern;

(iii) The provider ceases blocking calls that are part of the call pattern as soon as the provider has actual knowledge that the blocked calls are likely lawful;

(iv) The provider discloses to consumers that it is engaging in such blocking;

(v) All analytics are applied in a non-discriminatory, competitively neutral manner;

(vi) Blocking services are provided with no additional line-item charge to consumers; and

(vii) The terminating provider provides, without line item charge to the caller, the redress requirements set forth in subparagraphs 8 and 9.

* * * * *

(n) A voice service provider must:

(1) Respond fully and in a timely matter to all traceback requests from the Commission, civil law enforcement, criminal law enforcement, and the industry traceback consortium;

(2) [Reserved]

(3) Take affirmative, effective measures to prevent new and renewing customers from using its network to originate illegal calls, including knowing its customers and exercising due diligence in ensuring that its services are not used to originate illegal traffic.

5. Effective January 1, 2022, further amend § 64.1200 by adding paragraph (k)(9) to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

(k) * * *

(9) Any terminating provider that blocks calls, either itself or through a third-party blocking service, must immediately return, and all voice service providers in the call path must transmit, an appropriate response code to the origination point of the call. For purposes of this rule, an appropriate response code is:

(i) In the case of a call terminating on an IP network, the use of Session Initiation Protocol (SIP) code 607 or 608;

(ii) In the case of a call terminating on a non-IP network, the use of ISDN User Part (ISUP) code 21 with the cause location “user”;

(iii) In the case of a code transmitting from an IP network to a non-IP network, SIP codes 607 and 608 must map to ISUP code 21; and

(iv) In the case of a code transmitting from a non-IP network to an IP network, ISUP code 21 must map to SIP code 603, 607, or 608 where the cause location is “user.”

* * * * *

6. Delayed indefinitely, further amend § 64.1200 by adding paragraphs (k)(10) and (n)(2) to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

(k) * * *

(10) Any terminating provider that blocks calls on an opt-out or opt-in basis, either itself or through a third-party blocking service, must provide, at the request of the subscriber to a number, at no additional charge and within 3 business days of such a request, a list of calls to that number, including the date and time of the call and the calling number, that the terminating provider or its designee blocked within the 28 days prior to the request.

* * * * *

(n) * * *

(2) Take steps to effectively mitigate illegal traffic when it receives actual written notice of such traffic from the Commission through its Enforcement Bureau. In providing notice, the Enforcement Bureau shall identify with as much particularity as possible the suspected traffic; provide the basis for the Enforcement Bureau's reasonable belief that the identified traffic is unlawful; cite the statutory or regulatory provisions the suspected traffic appears to violate; and direct the voice service provider receiving the notice that it must comply with this section. Each notified provider must promptly investigate the identified traffic. Each notified provider must then promptly report the results of its investigation to the Enforcement Bureau, including any steps the provider has taken to effectively mitigate the identified traffic or an explanation as to why the provider has reasonably concluded that the identified calls were not illegal and what steps it took to reach that conclusion. Should the notified provider find that the traffic comes from an upstream provider with direct access to the U.S. Public Switched Telephone Network, that provider must promptly inform the Enforcement Bureau of the source of the traffic and, if possible, take steps to mitigate this traffic; and

* * * * *